

DRAFT

ACTING ON BEHALF OF ENDANGERED CHILDREN

Standards for Intervention in Families,  
Removal of Children From Their Homes,  
Returning Children Home,  
and  
Termination of Parental Rights

Governor's Advocacy Council on Children and Youth  
Raleigh, North Carolina

November 1982

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Governor's Advocacy Council on Children and Youth  
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## EXECUTIVE SUMMARY

Child abuse is a serious social problem that continues to disable many North Carolina children and families. When all other steps fail, it is appropriate and necessary for government to step in to protect children. If government action is not really necessary, however, it can do harm to the child by disrupting the child-parent relationship. If government action is not effective, it can do harm to the child by severing his bonds with his parents but not giving him any new permanent home.

Studies nationwide and in North Carolina show that many children are being harmed unnecessarily by government stepping in where it does not need to tread. Also, harm is being done in cases where intervention is necessary because the services needed to help the family and the child are not available. Money alone is not the problem, however: leadership must be exerted and policies developed to clarify when government should intervene and to ensure that when it does intervene it acts quickly to either return the child home or to find the child a new home.

The purpose of this report is to recommend new policies and, where necessary, changes in the law to support them, that will place a higher priority on permanency planning for foster children.

GACCY and its Committee on Foster Care Standards recommend this philosophy:

Government should remove a child from his home only when it has a better alternative available and it can be proven that a child will suffer specific harms if he stays in the home.

Once the child has been removed from the home, all available resources should be directed toward the family with the goal of making it safe to return the child.

If after six months of assistance to the family, it still is not safe to return a child under three years of age home, the court should consider termination of parental rights so that the child can be adopted into a new home. For a child three years of age or older, the time period of 12 months is used as the dividing line when the presumption shifts from working with the family to termination of parental rights and search for an adoptive home.

These recommendations are an effort to make the foster care system and the courts move in step to the child's sense of time. For a child under three years of age, a separation of two months can cause the child to feel homeless; for an older child, it may take a year. GACCY and the committee recommend longer periods of time to work with families before severing ties that the American Bar Association or other research reports suggest. We do this based on our philosophical preference for keeping the family unit intact wherever possible.



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# DRAFT

## PREFACE

This is an important report that calls for sweeping changes in the way we in North Carolina deal with the problems of endangered children. As the report indicates, our present practices often do more harm than good. Indeed, the overwhelming bulk of the professional literature as well as the 1978 study by the Governor's Advocacy Council indicates the course charted in these recommendations is a sound one.

The Governor's Advocacy Council on Children and Youth (GACCY) became convinced of the need for tighter standards for intervening in the lives of children while conducting its 1978 study, Why Can't I Have A Home? Development of statewide standards was one of the key recommendations in the report. When it became apparent that no agency or organization was going to address this issue, GACCY formed a committee to develop standards.

This committee has worked diligently. It has met 17 times in the past 18 months. It is broadly based, with social workers, agency administrators, attorneys and judges, a pediatrician, psychiatrist, foster parent, anthropologist, and citizen organization leader among its members. All members donated their time. GACCY provided staff support and reimbursed some members for travel expenses.

GACCY thanks the committee for its hard work and bold thinking. In accepting this report, the Council also pledges its efforts to make these recommendations become a reality for children and families in North Carolina.

Herb Stout  
Chairman, GACCY

November 1982



## OVERVIEW

There are about 7,857 children in the custody of county departments of social services in North Carolina. About 4,800 of these have been removed from their homes because they have been abused and neglected by their parents; 2,100 are in custody because of "dependency," meaning their parents have been judged unwilling or unable to adequately care for them; and about 1,000 are in custody because of delinquency or other reasons.

These children are placed in a foster home, group home, residential treatment facility, or child-caring institution. The state has stepped into their lives for their protection, and has placed them in a foster care arrangement temporarily, until they can be returned home or placed with relatives, or, if this is not possible, placed in a new adoptive family.

However, North Carolina's present foster care system is definitely not a temporary care system. The average child remains in the system almost four years (staying twice as long as the average foster care worker stays on the job). For almost one-fourth the foster children, the "permanent plan" in 1982 was "long-term foster care"--meaning the child will stay in foster care until "aging out" at age 18. About one-fourth will be placed for adoption, and the remaining half will be returned to their natural parents or relatives.

Some of the children removed from their homes, then, will never have a permanent home. The average foster child in North Carolina stays in foster care almost four years. Kermit T. Wiltse says that if more than 20% to 25% of children entering foster care "are still in care after two years, permanency planning is probably not being pressed as effectively as it could be." A 1978 study in North Carolina found that the average foster child had been placed in two foster homes in less than four years, with 10% in five or more homes.

One reason why children get caught in foster care drift is that social services are not funded adequately, making proper functioning of the system impossible. Money alone, however, will not solve the problem. Hard decisions must be made about the purposes for state intervention, and how the state should urgently seek a permanent home for a child.

State laws that cover protection of children from abuse, neglect, dependency, and delinquency are vague. Rather than saying that the state should intervene because of some specific harm to the child, the laws focus on what the parents have done, such as encourage delinquent acts, provide inadequate supervision, fail to provide medical care. This finds the state stepping in to protect children from anything ranging from severe physical assault to poor housekeeping.

Mnookin has noted:

A judge's reliance on personal value is especially risky when class differences confound the problem. The foster care system is frequently accused of being class biased, one in which middle-class professionals provide and control a service used mostly by poor people, with upper-lower and lower-middle class foster parents serving as intermediaries.

## OVERVIEW (Continued)

In North Carolina a 1978 study found that the average parent whose child is in foster care is 34, has an eighth-grade education, is unemployed or in unskilled work, is divorced or separated, has income below the poverty level, and has four children--all living away from home.

The state begins to intervene when a complaint of abuse, neglect, or dependency is filed with a county department of social services. The complaint is investigated by the agency, which can find no basis for the allegation, or, if it is substantiated, can offer voluntary help to the family, seek custody and supervise the child in his own home, or seek custody and remove the child. State laws are vague on what factors the court should use in determining when to remove a child from his home.

The bonds between child and parents are crucially important during the early years of life, and should not be severed unless the child is endangered. Harvard University researcher Burton L. White has written:

. . .central to the emotional well-being of an adult seems to be the caliber of the experiences children have with grown-ups (usually close family members) during the first two years of life. The mother-child bond or the attachment process is launched during the first two years of life, and how well this process transpired was (and still is) thought by most people to be of fundamental significance in respect to long-term emotional health.

While the child is away from home, North Carolina law provides no guidance on when a child should be returned to his parents. Reviews are required within six months of the initial placement in foster care, and annually thereafter (except for children whose parents' rights have been terminated, who get six-month reviews). The review legislation, however, while requiring judges to consider what the permanent plan for the child is, does not give guidance on when a child should be returned home.

In practice, once the child is removed from the home, there is usually little contact with the parents. Fanshel and Shinn, in a national study, traced a group of foster children for five years. They found almost 40% still in foster care--with 57% of these having had no visits from their parents in five years. The 1978 GACCY study found county departments of social services had addresses for only 40% of a sampling of natural parents of foster children and concluded: "It is hard for a child to be returned to his parents when the agency responsible for his custody and 'permanency planning' has lost all touch with them."

In the GACCY study, among a sampling of parents, half had never had a visit from the social worker since their child was placed in foster care, 88% did not meet the foster parents before the child was placed with them, and 71% had never had any contact with the foster parents. In fact, more than a third had been told not to contact the foster parents. Almost three-fourths said they had never had any contact with their children since they were placed in foster care. Most foster children in North Carolina, the study found, have no visits from parents or average less than one visit a year.



## OVERVIEW (Continued)

"A child's sense of time, as an integral part of the continuity concept, requires independent consideration. That interval of separation between parent and child which would constitute a break in continuity for an infant, for example, would be of no or little significance to a school-age youngster. The time it takes to break an old or to form a new attachment will depend upon the different meanings time has for children at each stage of their development.

"Unlike adults, who have learned to anticipate the future and thus to manage delay, children have a built-in time sense based on the urgency of their instinctual and emotional needs. As an infant's memory begins to incorporate the way in which parents satisfy wishes and needs, as well as the experience of the reappearance of parents after their disappearance, a child gradually develops the capacity to delay gratification and to anticipate and plan for the future.

"Emotionally and intellectually an infant and toddler cannot stretch his waiting more than a few days without feeling overwhelmed by the absence of parents. He cannot take care of himself physically, and his emotional and intellectual memory is not sufficiently matured to enable him to use thinking to hold on to the parent he has lost. During such an absence for the child under two years of age, the new adult who cares for the child's physical needs is latched onto "quickly" as the potential psychological parent. The replacement, however ideal, may not be able to heal completely, without emotional scarring, the injury sustained by the loss.

"For most children under the age of five years, an absence of parents for more than two months is equally beyond comprehension. For the younger school-age child, an absence of six months or more may be similarly experienced. More than one year of being without parents and without evidence that there are parental concerns and expectations is not likely to be understood by the older school-aged child and will carry with it the detrimental implications of the breaches in continuity we have already described. After adolescence is fully launched an individual's sense of time closely approaches that of most adults."

A manual published for attorneys by the American Bar Association describes the sense of urgency from a child's perspective:

The time-span in the decision-making process is critical in the first three years because the child is making rapid developmental changes and needs continuity of care to gain a sense of security that will enable the child to grow into a confident and capable adult. However, all children under 18 are at risk in this process. The immediate question a court needs to ask is: what is happening to the child in this case? The situation is not like a bank account where you can freeze the assets. Speed is essential when a child is in crisis. Time lags and a lack of certainty about future plans are themselves a major cause of trauma and damage to the child. The longer the delay, the more difficult it is to make any decision which will work.

## OVERVIEW (Continued)

The permanency planning effort which began statewide in 1978 is beginning to achieve some lasting results for children in North Carolina. The number of foster children has decreased 20%. The average length of stay in foster care has decreased by almost one year. Children are no longer being forgotten by the system; their cases are being reviewed on a regular basis both by the courts and agency review teams. Many children once considered "unadoptable," likely to remain in foster care until age 18, have been placed in permanent adoptive homes.

But there is still a great deal to be done to move children out of foster care drift into permanent placements and to prevent the arbitrary and unnecessary initial placements that break up families and start children into the foster care system.

The lack of permanence felt by foster children causes them problems. Anthony N. Maluccio and his colleagues observed that:

"Various researchers have pointed to the damage resulting from the tenuous status in which many foster children find themselves-- a status that makes it difficult for the child to develop an identity, to achieve a sense of belonging, to establish meaningful relationships with people, and to deal successfully with developmental tasks."

Janet L. Hoppes found children who went through a succession of foster care placements had difficulty adjusting in later life. Henry Maas found that foster children and adoptive children experience many of the same psychological problems, but that the sense of not belonging is much more intense for foster children. Fansel and Shinn concluded: ". . .the strain of prolonged separation has been shown in a number of scholarly investigations to portend such damage to their evolving personalities as to leave many children impaired in their functioning."

State law allows for parental rights to be terminated under certain conditions. When rights are terminated, the parent loses not only physical custody, but the right to ever regain custody. The child loses his parents, and has crucial emotional bonds to them severed. Besides court-ordered terminations, parents also may voluntarily relinquish their rights. In North Carolina, termination is carried out sparingly. In 1981-82, children had court-ordered termination of parents' rights.

The poet Gabriel Mistral warns that, "The Child is Today." And central to any consideration of a child's emotional ties is the child's sense of time. Goldstein, Freud, and Solnit urge that "placement decisions should reflect the child's, not the adult's, sense of time." They elaborate as follows:



## OVERVIEW (Continued)

Because of these facts, it is important that the state intervene in the lives of children and parents only when it is really necessary for the child's sake to do so. It is important when a child is removed from his home that a decision be made as soon as possible on whether to return the child to his parents or to seek some other permanent home for the child.

The committee has chosen to allow a period of six months to elapse for children under age three, and a period of one year to elapse for children over age three, before a consideration of whether to terminate parental rights can be made. We realize this extends beyond the period of time most researchers and the American Bar Association have recommended, and therefore runs the risk of causing further harm to the child. Nevertheless, it is the committee's philosophy that this is justified because of the primacy of the child-parent relationship, and the role the committee believes the state should play in supporting this relationship as much as possible.

Each day in North Carolina, thousands of young children wake up in a "temporary" living arrangement, without a permanent home. Most spend four years in this limbo, bereft of emotional ties and a sense of security at the very time they need it most, during the most formative years of their lives. We can no longer allow these children to grow up forgotten. They need what every child needs: a home.



## INTRODUCTION

Child abuse is a serious social problem that continues to disable many of North Carolina's families and children. The effects of this social epidemic include destruction of families, physical injuries to children, mental retardation, and antisocial behavior. Society must ensure that effective intervention and treatment is provided for the families and the children at risk. Considerable experience has now accumulated that suggests that government intervention carries its own risks and may at times be misguided. The removal of a child from his or her own home may also produce undesirable long-term results.

Wide variations in the types of services provided by social service agencies in different counties reflect a lack of agreement about the benefits and risks of intervention. Though comprehensive data are not available, there is reason to believe that current knowledge is adequate to arrive at a set of standards for intervention. The Governor's Advocacy Council on Children and Youth (GACCY) commissioned a Committee for Foster Care Standards to undertake the task of developing standards for intervention, removal, return, and termination of parental rights in families where there has been maltreatment. The committee examined the current North Carolina Child Abuse Reporting Law and felt that it adequately meets the needs of the state. No new standards for reporting child abuse are proposed.

The effort to develop uniform standards for intervention in the family, removal of children from their homes, return of children to their homes, and for termination of parental rights began in 1978 when GACCY conducted a study of foster care and adoption in the state. From all sources interviewed, from case record narratives, and from the statistical data itself about the children who became foster children, it was clear that there were no uniform criteria used in determining when a child would be removed from his home. The GACCY report, Why Can't I Have A Home?, recommended that uniform standards be developed.

Data from the North Carolina Central Registry for Child Abuse and Neglect were analyzed by Dr. Desmond Runyon and others at the University of North Carolina. They found that the individual characteristics of the child, the family, or the abuse incident were less important in the decision to place the child in foster care than the identity of the social service agency or court involved.

Anthropologist Dabney Miller found wide variation among social workers in their child placement decision making. Her report, "The Conceptual Underpinnings of Social Work," found that while social workers may share the same basic approaches to their work, as expressed, for example, in agency guidelines, these basic approaches mask considerable variation in their interpretation of the client's situation. It is not unlikely that such variation would lead to different decisions about foster care placement, regardless of the merits of a given situation.

The Committee for Foster Care Standards was composed of county social services supervisors, N. C. Department of Human Resources personnel, lawyers,

judges, foster parents, professional social work organization representatives, pediatricians, psychiatrists, social scientists, and GACCY staff. The committee met monthly for a year and all members did considerable work between meetings.

The committee undertook a comprehensive review of the relevant literature, the current statutes, and the work of similar groups. In its final report, the committee found many of its own ideas had been expressed in the 1979 report of the American Bar Association (ABA) Judicial Standards Project. The committee's final recommendations have borrowed some of the language of the ABA report.

### ASSUMPTIONS

The committee developed a consensus regarding these basic principles that underlie its recommended standards and statutes.

The committee is firm in its commitment to family autonomy and integrity but places paramount importance on the protection of the child. These standards seek to resolve the sometimes conflicting pressures of parental autonomy and child's needs.

The committee's extensive analysis of this conflict between parent and child produced the following assumptions:

- 1) Until proven otherwise, the family's rights to autonomy and the child's need for permanency means their interests are identical
- 2) Only when a child cannot be protected in the home should a child be removed from the home.
- 3) A child's need for continuity of care requires that the child be rapidly returned to the family from which the child was removed as soon as the child's safety can reasonably be assured.
- 4) Once a child has been out of his or her family for a certain period of time - measured from the child's perspective - the child's need for permanency and the family's rights to autonomy may diverge, and when that happens the child's needs must be paramount.

In summary, the committee's philosophy is to keep the child in the family as long as the child's safety can be reasonably assured, and thus protect both the child and the family's rights to autonomy; remove the child only when the child's safety cannot be reasonably assured; expend all available resources to rectify the problem in the family so that the child may be returned to the family as soon as it is safe to do this; and, if the child cannot be returned to the family within a certain period of time (predetermined, based on the child's sense of time at a given age), terminate the parental rights so that the child's now paramount need for permanency may be met through an adoptive family.

## GENERAL PRINCIPLES

### A. Family autonomy and Children's Rights:

- 1) A child's family consists of one or more caretaking adults and possibly other children and adults who share emotional and psychological ties to the child which extend far beyond the minimal obligations to provide food, clothing, and shelter.
- 2) A major responsibility of the family is to provide the psychological environment that will allow the child to grow and develop to his or her potential. The emotional and psychological ties that exist within the family are as vital to a child's growth as adequate nutrition.
- 3) Family autonomy is supported, in this discussion, as a way to facilitate the development of parent-child bonds. Society has no better mechanism for ensuring individual attention to the child's welfare than by supporting families.
- 4) Childhood is a precious resource that, when preserved, can allow the gradual development of children into effective and responsible adults. The child has a right to learn, plan, and even fail in an environment that is secure.
- 5) Children have the right to have a meaningful voice in choices about their futures, in accordance with their age and ability. This is not meant to place the burden of decision-making on children.
- 6) The child, like all adults, has the right to access to societal mechanisms to ensure the foregoing rights.

### B. Role of the State:

- 1) Intervention: Laws structuring a system of coercive intervention on behalf of endangered children should be based on a strong presumption of parental autonomy. Intervention involves several possible steps beginning with an investigation of allegations of harm as defined in Chapter III, Section A, beginning on Page 5. The Department of Social Services is authorized to collect any information necessary to determine if such harms have occurred. Coercive state intervention beyond investigation and assessment is predicated upon the finding that such harms exist and should have the goal of alleviating such harms. Unless the investigation confirms harm has been done, any government services provided to the family must be truly voluntary.
- 2) Purpose of Intervention: Coercive government intervention should be based on specific harms that a child has suffered or is likely to suffer.
- 3) Purpose of Removal: Removal of a child from his or her home should only be for the purpose of protecting the child from a specific harm the child has suffered, if other measures have either failed or are impossible. No endangered child (as defined in this document) may be removed from the home and placed in foster care for more than five days without an opportunity to have his or her rights protected by a hearing in the juvenile court.
- 4) Purpose of Return or Termination of Parental Rights: The goal of returning a child to the family home or terminating parental rights is to ensure the child's safety while protecting the child's need



for permanence. The goal of terminating parental rights is speedy adoption.

- 5) Statutory Guidelines: The statutory grounds for coercive intervention on behalf of endangered children:
  - a) should be defined as specifically as possible;
  - b) should authorize intervention only when the child is suffering, or there is substantial likelihood that the child will imminently suffer, serious harm;
  - c) should permit coercive intervention only when it can reasonably be expected to do more good than harm.
- 6) Protecting Cultural Differences: Standards for coercive intervention should take into account and respect cultural differences in childrearing. All decision-makers should examine the child's cultural background and values.
- 7) Child's Interest - Family Autonomy: State intervention should promote family autonomy to strengthen family life whenever possible. However, there occurs a time when the best interest of the child should prevail. For a child under three years of age - once the child is removed from the home, the child shall be returned within six months if the child is no longer endangered. If the child cannot be returned within that period of time, then any further action of the state should be guided by what is in the best interest of the child. For a child three years of age or older, once the child is removed from the home, the child shall be returned within 12 months if the child is no longer endangered.
- 8) Continuity and Stability: When state intervention is necessary, the entire system of intervention should be designed to fulfill a child's need for a continuous, stable living environment.
- 9) Recognizing Developmental Differences: Laws aimed at protecting children should reflect development differences among children at different ages.
- 10) Accountability: The system of coercive state intervention should be designed to ensure that all agencies participating in the intervention process, including courts, are held accountable for all their actions.

C. Role of the Community:

No one agency, institution, or organization has all the knowledge, skills, or tools to adequately intervene in child abuse situations. Multidisciplinary input and cooperation is vital. A model for the division of roles and responsibilities is as follows:

- 1) Departments of Social Services: Through their protective services aim, to organize the community response to child abuse.
- 2) Courts of law: As the ultimate decision-maker in disputed cases to

execute the will of the people as expressed in the law. Courts are responsible for determination of fact and ongoing monitoring of the process of intervention.

- 3) Scientific Community: (Including but not limited to medicine, psychology, sociology, anthropology, etc.) Through accumulated technical knowledge about the facts of child abuse and through its specialized diagnostic and treatment skills and tools, to advise the other disciplines when there are disputes as to the existence and/or cause of specific harms, and to the services which will best alleviate the harms. To conduct research into the causes and treatment and/or prevention of child abuse.
- 4) Society: Ultimate responsibility and authority for prevention of child abuse when parents are unable to do so; accomplished by adequate training, administration, and funding of agencies charged with organizing the community response and by provision of adequate legal guidelines for these agencies.





## STANDARDS AND COMMENTARY

### A. Intervention:

The fact that a child is endangered in a specific manner should be a necessary but not a sufficient condition for intervention. In order to intervene, it should be determined that intervention is necessary to protect the child from being endangered in the future and such determination should be based upon one of the following:

- 1) A child has suffered, or there is a substantial risk that a child will imminently suffer, a physical harm, inflicted non-accidentally by his/her parents, which causes, or creates a substantial risk of causing, disfigurement, impairment of bodily functioning, or other serious physical injury; or
- 2) A child has suffered, or there is a substantial risk that the child will imminently suffer, physical harm causing disfigurement, impairment of bodily functioning, or other serious physical injury as a result of conditions created by his/her parents or by the failure of the parents to adequately supervise, care for, or protect him/her; or
- 3) A child is suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or non-organic failure to thrive or untoward aggressive behavior toward self or others, and the child's parents are unwilling or unable to authorize treatment for him/her, or there is substantial risk that the child will imminently suffer serious emotional damage; or
- 4) A child has been sexually abused by his/her parents or a member of his/her household; or
- 5) A child is in need of medical treatment to cure, alleviate, or prevent him/her from suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his/her parents are unwilling to provide or consent to the medical treatment; or

- 6) A child is committing delinquent or undisciplined acts as a result of parental encouragement, guidance or approval.

B. Goal of Intervention:

The goal of intervention is to attempt to keep the family intact and functioning as a system conducive to family autonomy, while protecting the children from the harms specified in III-A. When it has been determined that grounds for intervention exist, protective services must be provided to the family, to attempt to remedy the problems in the family which necessitated the intervention.

COMMENT:

When parents fail to provide adequate care for their children, society has the responsibility to intervene to assist the family. Society should intervene with voluntary services at the request of families if the services can benefit the family. Society should intervene coercively only if it can be determined that there is harm to the child and the family will not agree to voluntary services.

An INTERVENTION is <sup>1</sup>. any act by society's authorized representatives to determine if specific harms are occurring to minor children or <sup>2</sup>. any act designed to alleviate such harms. The need for intervention, sometimes coercively, in some families is abundantly documented in the medical literature describing how parents and other caretakers abuse children and the effects on these children and other family members.

Comprehensive programs of intervention also are described in the literature and will not be exhaustively described here; however, several principles deserve elaboration:

- 1) The focus of any intervention should be to investigate actual or potential specific harms to the child as a result of parental actions or omission of actions relative to the specific harm. Such a focus will have these advantages:
  - a) Focus on specific harms will eliminate or minimize bias against safe, adequate, and acceptable cultural or sub-cultural variations of child-raising practices. 1) a specific harm is occurring to the child and 2) specific actions or omission of actions by the parents or caretakers are related to the cause or the prevention of this harm.
  - b) Focus on specific harms will help to guide decision-making regardless of the issue of "fault" of the parent. For example, there is often a clear distinction between parents who lack the motivation, will or intent to adequately care for their children as opposed to parents who lack the knowledge, resources, or opportunity to provide care.

While such a distinction may be legitimately considered at many points in a given case during the process of intervention, the key focus should be what harm is occurring to the child and how best to alleviate the harm. In other words, an appropriate intervention designed to alleviate a specific harm will proceed regardless of parental fault. This focus should prevent any intervention from being used as "punishment" to the parent and conversely should prevent intervenors

from overlooking specific harms out of sympathy for a parent's unfortunate circumstances.

- 2) Any intervention into a family is inherently a challenge to the authority and autonomy of that family. Such a challenge carries the risk of doing more harm than good. An intact home, where lines of authority and responsibility are clear and free of unnecessary intrusion from outside the family, is an essential ingredient in providing an environment where the child can reach full potential.

B. Removal:

- 1) A court is authorized to remove a child from his/her home when it has determined that there is clear and convincing evidence that one or more of the following grounds for removal exists:
  - a) A child has suffered, or there is a substantial risk that a child will imminently suffer, a physical harm, which causes, or creates a substantial risk of causing, disfigurement, impairment of bodily functioning, or other serious physical injury; or
  - b) A child has suffered, or there is a substantial risk that the child will imminently suffer, physical harm causing disfigurement, impairment of bodily functioning or other serious physical injury as result of conditions created by his/her parents or by the failure of the parents to adequately supervise, care for or protect him/her; or
  - c) A child is suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or non-organic failure to thrive, or untoward aggressive behavior toward self or others, and the child's parents are not willing to provide treatment for him/her; or
  - d) A child has been sexually abused by his/her parent or a member of his/her household; or
  - e) A child is in need of medical treatment to cure, alleviate, or prevent him/her from suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his/her parents are unwilling to provide or consent to the medical treatment; or
  - f) A child is committing delinquent acts as a result of parental encouragement, guidance or approval.
  - g) The court finds that removal is necessary to protect the child from further endangerment, and that there is a placement available in which the child will not be endangered.

AND.....Intervention and services provided to the family have failed,  
AND.....The court finds that removal is necessary to protect the child from further endangerment,  
AND.....There is a placement available in which the child will not be endangered.

- 2) When a child is ordered removed from his/her home, or within 30 days of the emergency removal, the agency charged with his/her care should provide the court with a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. Whenever possible, this plan should be developed in consultation with the parent, who should be encouraged to help in the placement. If there is a dispute regarding any aspect of the plan, final resolution should be by the court.
  - a) The plan should specify what services the parents will receive in order to enable them to resume custody and what actions the parents must take in order to resume custody.
  - b) The plan should provide for the maximum parent-child contact possible, unless the court finds that visitation should be limited because it would be seriously detrimental to the child.
  - c) A child generally should be placed as close to home as possible, preferably in his/her own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's well-being.

In each case the court shall consider the following criteria:

- i. Services which have been offered to remedy the problem in the family;
  - ii. Where the juvenile's return home is unlikely, the efforts to evaluate or plan for other methods of care;
  - iii. Goals of the foster care placement and the appropriateness of the foster care plan;
  - iv. A new foster care plan, if continuation of care is sought, that addresses the role the current foster parents will play in the planning for the juvenile;
  - v. Reports on the placement the juvenile has had and the services offered to the juvenile and the parent.
  - vi. When and if termination of parental rights should be considered;
  - vii. Any other criteria the court deems necessary.
- 3) Rights of parents and children following removal.
    - a) Every effort should be made to facilitate the return of the child as quickly as possible.
    - b) When a child is removed from his/her home, his/her parents retain the right to consent to major medical decisions, to the child's marriage, or to the child's joining the armed services, unless parental consent is not generally required



for any of these decisions, or the parents cannot be found after due and diligent search, or the court finds that the parent's refusal to consent would be seriously detrimental to the child. Every parent has the right to visit with his/her child unless otherwise ordered by the court.

- c) Depending on the child's age and maturity, the agency should also solicit and consider the child's participation in decisions regarding his/her care while in placement.

#### COMMENT:

Removal of a child from his or her home is radical treatment and should be approached with great caution. The initial decision to remove the child must be based on whether it is safe for the child to remain in his home. Criteria determining safety are to be observable and behavior specific. This goes beyond the specific incident. The safety criteria must be in terms which describe specific behaviors and patterns of parental care of the child which result in identified harm to the child. The issue of whether or not the family is at fault shall not be a consideration in a decision to remove a child from his home. Unless clear identification is made of what is harming a child because of his parent's action, removing the child could in fact be a penalty for the parent's morally disapproved behavior rather than an assertion of the child's right to have his interests protected. This should be avoided.

Once specific harm to the child is identified, the agency has the obligation to offer services designed to remove that harm before removing the child from the home unless 1) there exists actual physical endangerment, exploitation, or abuse against which no adequate control can be supplied by the resources of the agency and community 2) the child is unprotected or uncared for because of a crisis such as the absence of parents due to illness or desertion.

When there is diligent effort on the part of the agency and community to provide services for the family to alleviate the specific harm to the child, and the child continues to be harmed because of an inability or unwillingness of the parent to use services offered to provide for the welfare of their child, removal would be indicated only if a better alternative is available. If placement is indicated, the least detrimental placement alternative shall always be the placement of choice.

There are two points at which the standards for removal differ from the standards for intervention, in contrast to the general policy that standards for removal are synonymous with standards for intervention and invoked when attempts at intervention fail to protect the child from harm. In the first instance, there must be a finding of actual emotional harm, as opposed to a risk of emotional harm, in order to remove the child. This is different from the standards for physical harm, where a risk of physical harm may be grounds for removal. This different standard for emotional harm is recommended not because emotional harms are not as serious as physical harms but because it is more difficult to predict consequences having to do with emotional factors. Second, a child may not be removed from the home under the designation of "undisciplined," although an intervention may be ordered, and the court may take other legal actions toward the parents. This is recommended because it is difficult to define what specific harms are occurring to the undisciplined child. In some cases an intervenor may reveal that the undisciplined child is suffering other specific harms and removal may be predicated upon these findings. In both these examples we are making use of our focus on specific harms to the child and we are invoking our philosophical preference for family

autonomy. We are in effect recommending that when in doubt the intervenors should err on the side of keeping the family together.

The guiding principle in determining the least detrimental alternative shall be the goal of reuniting the family. Consideration in choice of placement shall be given to 1) extended family 2) an environment that resembles the child's own home in socio-economic, cultural, racial, and religious characteristics 3) frequent visitation and contact with the family 4) placement of siblings together, and 5) potential permanence. Upon removal the agency is to immediately and continuously provide services designed to facilitate the return of the child until the decision is made to terminate parental rights.

C. TEMPORARY CUSTODY:

1) Taking a juvenile into temporary custody.

Temporary custody means taking physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a department of social services worker if there are reasonable grounds to believe such custody is necessary to prevent the child's imminent death or serious bodily injury and that the child's parent(s) or other such caretaker(s) is unable or unwilling to protect the child from such imminent death or injury.

However, where risk to the child appears created solely because the child has been left unattended at home, the physician, official, or agent or employee should be authorized only to provide an emergency caretaker to attend the child at home until the child's parent returns or sufficient time elapses to indicate that the parent does not intend to return home.

2) Duties of person taking juvenile into temporary custody.

A person who takes a juvenile into custody without a court order shall proceed as follows:

- a) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;
- b) Release the juvenile to his parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary.
- c) If the juvenile is not released under subsection (b), the person having temporary custody shall proceed as follows:

In the case of a juvenile alleged to be abused, he shall communicate with the director of the department of social services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority for a determination of the need for continued custody.

d) A juvenile taken into temporary custody shall not be held for more than 12 hours unless:

- i. A petition or motion for review has been filed by an intake counselor or the director of the department of social services, and
- ii. An order for nonsecure custody has been entered by a judge.

3) Authority to issue custody orders; delegation.

In the case of any juvenile alleged to be within the jurisdiction of the court, when the judge finds it necessary to place the juvenile in custody, he may order that the juvenile be placed in nonsecure custody.

Any district court judge shall have the authority to issue nonsecure custody orders. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order, and may include intake counselors and other members of the chief court counselor's staff.

4) Criteria for secure or nonsecure custody.

When a request is made for nonsecure custody, the judge shall order nonsecure custody only when he finds that there is a reasonable factual basis to believe the matters alleged in the petition are true, and there are reasonable grounds to believe such custody is necessary to prevent the child's imminent death or serious bodily injury.

D. RETURN:

1) Child Three And Under:

- a) For a child who is three years old or less when removed from his/her home by court order, there shall be a Review Hearing no more than six months from the date the child was placed in foster care. At this review hearing, the court shall return the child to his/her home unless the court finds by clear and convincing evidence that the child will be endangered, as specified in Standard B, if returned home.
- b) If the child is not returned home, according to the criteria set out in (1)(a) above, the court shall determine whether the best interests of the child require that a petition for termination of parental rights should be filed. If it determined that a petition for termination of parental rights should be filed, the court will direct the guardian ad litem, the department of social services, or other interested parties to file a petition within 15 days. A hearing will be held to determine whether or not the petition should be granted within 90 days from the date the petition is filed. Continuances should be granted only in extraordinary circumstances. At the hearing, the judge shall terminate parental rights if it is in the best interests of the child to do so.
- c) When a child is continued in foster care, after the six-month hearing, and a petition for termination of parental rights has not been ordered, there shall be a hearing scheduled six months after the Review Hearing and every six months thereafter to determine whether the best interests of the child require that the child be returned home, that a petition for termination of parental rights be ordered, or that the child be continued in foster care. In no case shall the child be returned home after this hearing if there is reasonable cause to believe the child will be endangered.
- d) At each review hearing where the child is not returned home and a petition for termination of parental rights has not been ordered, the court shall establish on the record:
  - i. Services which have been offered to remedy the problem in the family;
  - ii. Where the juvenile's return home is unlikely, the efforts to evaluate or plan for other methods of care;
  - iii. Goals of the foster care placement and the appropriateness of the foster care plan;
  - iv. A new foster care plan, if continuation of care is sought, that addresses the role the current foster parents will play in the planning for the juvenile;
  - v. Reports on the placements the juvenile has had and the services offered to the juvenile and the parent;



vi. When and if termination of parental rights should be considered;

vii. Any other criteria the court deems necessary.

- e) When a child is returned to the home, casework supervision should continue for a period of six months, at which point there should be a hearing on the need for continued intervention as specified in Standard A.

2) Child Over Three:

- a) For a child who is over three years old when removed from his/her home by court order, there shall be a hearing six months from the date the child was placed in foster care. At this review hearing the court shall return the child to his/her home unless the court finds by clear and convincing evidence that the child will be endangered, as specified in Standard B, if returned home.
- b) If the child has not been returned home at the first six month review hearing, there shall be another review hearing six months from the date of the first hearing, at which time, the court shall return the child to his/her home unless the court finds by clear and convincing evidence that the child will be endangered, as specified in Standard B, if returned home.
- c) If the child is not returned home, according to the criteria set out in (1)(a) above, the court shall determine whether the best interests of the child require that a petition for termination of parental rights should be filed. If it determined that a petition for termination of parental rights should be filed, the court will direct the guardian ad litem, the department of social services, or other interested parties to file a petition within 15 days. A hearing will be held to determine whether or not the petition should be granted within 90 days from the date the petition is filed. Continuances should be granted only in extraordinary circumstances. At the hearing, the judge shall terminate parental rights if it is in the best interests of the child to do so.
- d) When a child is continued in foster care, after the six-month hearing, and a petition for termination of parental rights has not been ordered, there shall be a hearing scheduled six months after the Review Hearing and every six months thereafter to determine whether the best interests of the child require that the child be returned home, that a petition for termination of parental rights be ordered, or that the child be continued in foster care. In no case shall the child be returned home after this hearing if there is reasonable cause to believe the child will be endangered.
- e) At each review hearing where the child is not returned home and a petition for termination of parental rights has not been ordered, the court shall establish on the record:

- i. Services which have been offered to remedy the problem in the family;
  - ii. Where the juvenile's return home is unlikely, the efforts to evaluate or plan for other methods of care;
  - iii. Goals of the foster care placement and the appropriateness of the foster care plan;
  - iv. A new foster care plan, if continuation of care is sought, that addresses the role the current foster parents will play in the planning for the juvenile;
  - v. Reports on the placements the juvenile has had and the services offered to the juvenile and the parent.
  - vi. When and if termination of parental rights should be considered;
  - vii. Any other criteria the court deems necessary.
- f) When a child is returned to the home, casework supervision should continue for a period of six months, at which point there should be a hearing on the need for continued intervention as specified in Standard A.

3) The Permanent Plan:

- a) When the court at any review hearing orders that a petition for termination of parental rights be filed, the Department of Social Services shall begin preparing a permanent plan for the child.
- b) At the subsequent termination hearing, the Department of Social Services shall present the judge with a plan for providing a permanent home.

E. TERMINATION OF PARENTAL RIGHTS

- 1) The goal of termination of parental rights is adoptive placement.
- 2) Standard for termination when child is in foster care placement and a petition for termination of parental rights has been ordered:
  - a) For children who were three years old and under at the time of placement, a court should order that a petition for termination of parental rights be filed after the child has been in placement for six months, if the child cannot be returned home at that time, unless the court finds that it is in the best interests of the child that termination of parental rights not be considered. If filing of a petition for termination is ordered, a termination hearing will be held within 90 days of the date the petition was filed.

- b) For a child who was over three at the time of placement, the court should order a petition for termination of parental rights be filed after the child has been in placement for one year if the child cannot be returned home at that time, unless the court finds that it is in the best interests of the child that termination of parental rights not be considered. However, if at the termination hearing the court finds that the parents have failed to maintain contact with the child during the previous six months and to reasonably plan for resumption of care of the child, the court may order termination.

If at any review hearing the court determines that termination of parental rights should be the plan, the court should order that a termination petition be filed within 15 days, and a termination hearing held within 90 days from the date the petition was filed.

- c) Whenever parental rights have not been terminated under subsections a and b because the court has found that it was not in the best interests of the child that they be terminated, the case should be reviewed every six months to determine whether it remains in the best interests of the child not to consider termination of parental rights.
- d) In determining the best interest of the child, the court may consider the following, among other things:
- i. Whether, because of the closeness of the parent-child relationship, it would be detrimental to the child to terminate parental rights;
  - ii. The child is placed with a relative who does not wish to adopt the child;
  - iii. Because of the nature of the child's problems, the child is placed in a residential treatment facility, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed;
  - iv. The department of social services cannot reasonably assure the court that an adoptive home can be secured for the child;
  - v. A child of sufficient maturity to understand, who has been informed of the effect of termination of parental rights and adoptive placement, objects.

## COMMENTS:

The standards for return of a child to the family and for termination of parental rights are reverse sides of the same coin: terminate parental rights if efforts to return are not successful within a given period - if termination is in the best interest of the child. The standards to be applied when a child has been removed from the family are as follows:

- 1) When children must be removed for their own safety and protection, the agency must make immediate and diligent efforts to encourage rehabilitation of the family, and reunification.
- 2) These rehabilitative efforts should begin immediately after removal and continue on a concentrated basis until the termination of parental rights standards are triggered. (Note: Because motivation and desire for change are at their greatest after the crisis of removal, potential for positive results of the services should be evident at an early stage).
- 3) A child's need for permanence and the family's rights to autonomy require that the child be returned home as soon as his/her safety can be reasonably assured, even if some professionals may be of the opinion that the child's other interest may be served better in foster care. However, once six months have passed for a child placed in foster care under the age of three, or a year for a child placed over the age of three, only the best interests of the child will be considered, as parents' rights to family integrity will have lapsed.
- 4) Once 6 (12) months have passed, a child under (over) three, shall be returned to the family only if the child's interests are best served, in the opinion of the agency and the court, with the family. (The age of the child shall be measured from the date the child is removed from the home.)
- 5) After 6 (12) months, if the goal is not to return the child, the efforts of the agency should shift from rehabilitation of the family to establishing a permanent plan for the child, with or without the involvement of the family.
- 6) A child shall be allowed to participate, to the extent possible and appropriate, in the plan for the child.
- 7) Once a child is returned to the family, the agency should continue services to improve and cement the reunification process.
- 8) If a child under (over) three has not been returned to the family within 6 (12) months, the family's rights to autonomy lapse in favor of the child's interest in permanency, and thus at that time parental rights should be terminated if it is in the best interests of the child to do so.

## CONCLUDING COMMENTS

The informed reader of this report will find recommendations which we believe are significant departures from previous policies and procedures addressing the needs of endangered children and their families. The specific areas of change are as follows:

- 1) Terminology. The reader is referred to the glossary.
- 2) A focus on specific harms to children rather than on a model of parental behavior.
- 3) An emphasis on the child's concept of time as it relates to the process of decision-making by intervenors.
- 4) Specific procedure changes regarding the process of removal of a child from the natural home.

Two final points are in order. First, the mandate of this committee is the writing of standards in order to guide the work of the intervenors. However, it is clear that the lack of well-written guidelines is not the only barrier to the protection of endangered children. Any intervening agency must be adequately staffed, trained, rewarded, and supported by multidisciplinary resources in order to function well.

Secondly, it is important to acknowledge that any standards, however well thought out and clearly written, will not eliminate all the complexity and uncertainty that decision-makers face. Intervenors at all level of the process of working with these troubled families will be faced with the need to make judgements based on less than definitive data. For example, the courts will at times be asked to make a decision based on the "best interests of the child" or the "least detrimental alternative." These are complex terms, with which no one on the committee is completely comfortable, but with the current state of knowledge regarding endangered children there is no alternative to these terms.

In summary, in the work of providing assistance to children who cannot be protected from harm by their families, there are shortcomings at each step in the process of intervention, from standards to resources. We offer this report as an attempt to address one part of the problem.

bkh

(revised - November 3, 1982)





## APPENDICES

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## GLOSSARY

The reader of this report will note that there has been substantive change in the terminology used to refer to children who are at risk of harm. The following definitions are to be used in conjunction with the explanations in the text. The definitions put forth in many cases are not meant to be exhaustive elaborations of the particular concept; a complete definition of many of these terms would require several paragraphs. These definitions are meant to delineate the meanings of the concepts in the context of endangered children.

- 1) Anxiety: Persistent feelings of apprehension or fear resulting in decreased perception of well being and/or deficits in psychosocial functioning.
- 2) Best-interest-of-the-child: A complex, multifactorial principle which takes into account all aspects of a child's life. In this framework the safety of the child from specific harms and the provision of stable, continuous relationships with family members are of primary importance.
- 3) Child abuse: Now covered under concept of "endangered child".
- 4) Child neglect: Now covered under concept of "endangered child".
- 5) Culture: A system or process that gives a people, based on their race, religion, economics, regional, or ethnic similarities, a general design for living and patterns for interpreting reality.
- 6) Dependent child: To be discussed.
- 7) Depression: A disorder of mood, evidenced by features such as may vary depending on the age of the child, and may include anxiety upon separation from parents and caretakers, antisocial behavior, school failure, substance abuse, and conflict in peer relationships. At times the associated features may be predominant and the mood disturbance not be immediately evident. Formal psychological testing may be required to clearly delineate the disorder.
- 8) Endangered child: Any child described as suffering specific harms.
- 9) Family: A child's family consists of one or more caretaking adults and possibly other children and adults who share emotional and psychological ties to the child which extend far beyond the minimal obligations to provide food, clothing, and shelter.
- 10) Family autonomy: The right of a family to be free of unnecessary challenge to self-regulation and direction.
- 11) Intervention: Any act by society's authorized representatives to determine if specific harms are occurring to minor children or any act designed to alleviate such harms.
- 12) Non-organic failure to thrive: A serious and often life-threatening medical syndrome for which no physical cause can be found. Most often used to refer to infants who fall below the third percentile in growth parameters but is also used here to refer to children of all ages who demonstrate a profound

and enduring failure to achieve and maintain age-appropriate developmental milestones. Some form of disturbance in the parent-child relationship has been found in studies of the disorder. Also called a syndrome of "psycho-social deprivation."

- 13) Parent: Natural mother and/or natural father; adoptive mother and/or adoptive father.
- 14) Parent Figure: The person or persons responsible for providing a safe environment for a child. The term implies more than simple physical sustenance and implies specifically the development of strong emotional bonds. The term "parent figure" is used to designate the person(s) with whom the child develops these bonds, irrespective of biologic identity.
- 15) Parental authority: The right and responsibility of parents to make decisions relevant to the well-being of their children; this includes major issues such as medical decisions as well as daily matters such as life-style and cultural aspects of living.
- 16) Parental responsibility: The duty to provide a physical and emotional environment where the child may develop free from harm.
- 17) Undisciplined child: A child less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a child to be; or who has run away from home.
- 18) Caretaker: Any person to whom the parents delegate parental responsibility and authority. The responsibility of the parents for any act by the caretaker which causes harm to the child extends only to the extent that the parents know of such acts or knew that such acts were likely to occur.

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ACTING ON BEHALF OF ENDANGERED CHILDREN



